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EXAMINER

WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
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1772

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/057,346
Filing Date: January 28, 2002
Appellant(s): RICHARD, BEVERLY

Kenneth D. Baugh
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11 May 2006
appealing from the Office action mailed 18 November 2004.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The appellant's statement of the status of amendments after final rejection contained in the brief is correct in that no amendment to the claims was entered after final. Appellant has several minor errors. Appellant states that amendments were filed on 9 April 2003, 2 January 2004 and 18 November 2004. These are the mailing dates of office actions, not appellant's amendments. The correct dates for appellant's amendments are 14 October 2003, 30 August 2004 and 21 March 2005, with the last one being a request for reconsideration of the final office action mailed 18 November 2004, that contains no amendment of the claims.

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(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: all claims are rejected under 35 U.S.C. 103 in view of U.S. Patent 6,280,757. There is only one ground of rejection. Appellant presents argument under a separate heading for each of the two independent and 10 dependent claims regarding the rejection using U.S. Patent 6,280,757.

(7) Claims Appendix

A substantially correct copy of appealed claims 1-12 appears on pages 13-12 of the Appendix to the appellant's brief. The minor errors are as follows: the claims are correct except that the claim labels for claims 2, 3, 4, 6, 8, 9, 10 and 12 should read "previously amended" instead of "amended".

(8) Evidence Relied Upon

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAtee et al. (U.S. 6,280,757).

The reference teaches two outer layers, which maybe made of paper fibers and an internal patterned adhesive layer with a cleaning substance in the pattern of the adhesive (Figures 4 and 5 and the abstract). More than two plies may also be used with any or all of the plies being apertured (col. 6, lines 50-60). The cleaning substance may be added onto or impregnated into any or all of the surfaces of the different layers, either before or after they are joined (col. 30, lines 45-60). A biocide may be an optional ingredient (col. 30, lines 10-30). The instant invention claims a three layer structure with an antibacterial agent. It would have been obvious to one of ordinary skill in the art to add a bacterial agent from the options given in the reference in order to enhance they hygiene of the tissue.

(10) Response to Argument

A) Response to Argument Regarding Claim 1 starting on page 7 of the brief filed 11 May 2006.

Appellant argues that there is no teaching of an upper planar shaped absorbent member, an intermediate planar shaped absorbent member having a plurality of apertures, an antibacterial member formed on the upper surface of the intermediate layer, or a lower shaper planar absorbent member.

The examiner disagrees. McAtee et al. clearly teaches in col. 6, lines 50-60, that there may be more than two insoluble (fibrous layers) and that all or some of the layers may be perforated. Though the most frequently mentioned embodiment is two layers with perforations in one of the layers, the reference clearly teaches embodiments of three or more layers, with apertures in all or some of the layers. Three layers with all of the layers having apertures, would be read on by the instant claimed three layer laminate with perforations in the intermediate layer claim language.

Appellant also argues that the perforations or apertures in McAtee et al. do not extend all the way through the intermediate layer. At col. 6, lines 3 the reference states that "Such

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apertures need not protrude completely through to the surface of the substrate with is opposite to the cleansing surface". In a multilayer substrate this simply means that the apertures do not have to protrude from one external surface of the multilayer substrate to the opposite external surface of the multilayer substrate. It does not prohibit apertures from going through all of the layers or from going all of the way through one on the layers of the multilayer substrate.

Regarding the lack of an antibacterial member on top of the intermediate member, McAtee et al. teaches in col. 30, lines 45-60 that the lathering agent and other components maybe impregnated in any or all of the layers of the multilayer laminate. The lathering agent acts as an antibacterial agent in that it removes bacteria from a surface that is being cleaned. Col. 30, line 27, also discloses a biocide as an additional component. If any of these components are impregnated in a layer there will be residual material on top of the layer that meets the instant claim language for an antibacterial material layer.

Lastly appellant argues that there is no teaching of an upper planar layer. The position of the examiner is that the dry layers of the substrate of the reference, such as shown in

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Figure 5A, are substantially planar and meet the claim limitations that require planar shaped members.

B) Response to Argument Regarding Claim 2 starting on page 8 of the brief filed 11 May 2006.

Appellant argues that there is no teaching of a thin single absorbent paper layer in McAtee et al. Col. 6, lines 1-5 clearly teach that paper layers are an option. Thin sheets are also disclosed as an option at col. 7, lines 62-63.

C) Response to Argument Regarding Claim 3 starting on page 8 of the brief filed 11 May 2006.

Appellant argues that there is no teaching of an intermediate layer of thin paper with a plurality of openings. These limitations have been addressed above.

D) Response to Argument Regarding Claim 4 starting on page 9 of the brief filed 11 May 2006.

Appellant argues that there is no teaching of an of the antibacterial member being dry. The examiner disagrees. Col. 30, lines 59-60 of McAtee et al. teaches drying of the

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impregnated components after application to the substrate layers.

E) Response to Argument Regarding Claim 5 starting on page 9 of the brief filed 11 May 2006.

No new arguments are advanced regarding this claim.

F) Response to Argument Regarding Claim 6 starting on page 9 of the brief filed 11 May 2006.

No new arguments are advanced regarding this claim.

G) Response to Argument Regarding Claim 7 starting on page 10 of the brief filed 11 May 2006.

Appellant argues that there is no teaching of a lower planar shaped layer with apertures and an upper planar shaped member with an antibacterial layer on top on the perforated lower layer. The reference clearly teaches in Figure 5A a two layer laminate with substantially planar layers and apertures in the upper layer. If the picture is held upside down, it meets the claim limitations for a lower perforated layer. As discussed above, antimicrobial material can be impregnated into any of the layers.

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H) Response to Argument Regarding Claim 8 starting on page 11 of the brief filed 11 May 2006.

Appellant argues that there is no thin paper layer. These limitations are covered in section above regarding claim 2.

I) Response to Argument Regarding Claim 9 starting on page 9 of the brief filed 11 May 2006.

Appellant argues that there is no intermediate layer with apertures. These limitations have been addressed above regarding claims 7, 2 and 8.

J) Response to Argument Regarding Claim 10 starting on page 10 of the brief filed 11 May 2006.

Appellant argues that there is no dry antibacterial material. This limitation has been addressed in the section regarding claim 4 above. The examiner gives not give particular weight to the source of moisture to activate the antibacterial layer as this is an intended use. The lathering agent of McAtee et al. can be activated by moisture from any source.

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K) Response to Argument Regarding Claim 11 starting on page 11 of the brief filed 11 May 2006.

No new arguments are given for this claim.

L) Response to Argument Regarding Claim 12 starting on page 12 of the brief filed 11 May 2006.

Appellant argues that that there is no teaching of an antibacterial soap in McAtee et al. As noted above the examiner takes the lathering agent of McAtee et al. as being antibacterial or in the alternate relies on the optional impregnation of a biocide as noted above. Applicant argues that cleansing article of McAtee is totally different in structure and concept than the instant claimed invention. The examiner disagrees. As noted above, the instant claimed structure and function are substantially similar to that taught by McAtee et al.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

William P. Watkins III

WILLIAM P. WATKINS III
PRIMARY EXAMINER

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SPE Art Unit 1774

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